

# **BOARD OF ZONING APPEALS**

## **Minutes**

**JANUARY 28, 2003**

The regular meeting of the Board of Zoning Appeals of the City of Wichita, Kansas, was held at 1:30 p.m. on January 28, 2003, in the Planning Department Conference Room, Tenth Floor of City Hall, 455 N. Main, Wichita, Kansas.

The following Board members were in attendance:

JAMES RUANE, JAMES SKELTON, JOHN ROGERS, BICKLEY FOSTER.

The following Board members were absent:

RANDY PHILLIPS.

ERMAN MARKHAM.

SHARON DICKGRAFE -- Law Department present

J. R. COX -- Office of Central Inspection present.

The following Planning Department staff members were present:

SCOTT KNEBEL Assistant Secretary,

LISA ESTRADA, Recording Secretary.

**RUANE:** Item #1, December 17, 2002 BZA meeting minutes.

**FOSTER moves, SKELTON seconds to approve December 17, 2002 BZA meeting minutes.**

**Motion Carries 4-0.**

**RUANE:** Item #2, BZA2002-00072, variance request to the Sign Code to increase the height of a pole sign for a motel on property zoned "GC" General Commercial located south of Kellogg and east of Dugan, first we will hear from staff.

**KNEBEL, Planning staff:** Presents staff report and slides. Staff recommends approval, subject to conditions, in the following report:

### **SECRETARY'S REPORT**

**CASE NUMBER:** BZA2002-00072

**OWNER/APPLICANT:** Hotel Enterprise Group, Inc. c/o Raju Sheth

**REQUEST:** Variance to Section 24.04.221(3) of the Sign Code to increase the maximum permitted height of a pole sign for a motel from 25 feet to 30 feet

**CURRENT ZONING:** "GC" General Commercial

**SITE SIZE:** 1.1 Acres

**LOCATION:** South of Kellogg and east of Dugan

**JURISDICTION:** The Board has jurisdiction to consider the variance request under the provisions outlined in Section 2.12.590.B, Code of the City of Wichita. The Board may grant the request when all five conditions, as required by State Statutes, are found to exist.

**BACKGROUND:** The applicant is requesting a variance to Section 24.04.221(3) of the Sign Code to increase the maximum permitted height of a pole sign from 25 feet to 30 feet. The subject property is located south of Kellogg and east of Dugan at 6245 W. Kellogg. The subject property is zoned "GC" General Commercial and is currently developed with a Super 8 motel. At the time the application was submitted, the brand of the motel was Ramada Limited.

The applicant proposes to modify an existing pole sign to increase its height from 25 feet to 30 feet. The applicant recently reduced the size of the pole sign from 124 square feet to 70 square feet when the brand of the motel was changed to Super 8. Attached to this report are elevation renderings of the former and proposed new signs showing the size and height of each sign.

The applicant has submitted an extensive justification statement (attached) for the requested variance to permit the sign height increase. Essentially, the Kellogg overpass at Dugan and the associated highway signage have blocked visibility of the motel sign from Kellogg. The applicant indicates that the motel is listed on six highway exit signs on Kellogg and I-235, but customers still have significant difficulty finding the motel due to the sign not being visible from Kellogg. The result has been a significant decrease in the amount of business since the Kellogg overpass at Dugan was constructed. The applicant indicates that other motels in the area with more visible signage have not experienced a loss in business since the overpass was constructed.

In the "GC" General Commercial zoning district, Section 24.04.221(3) of the Sign Code limits the maximum height of a pole sign to 25 feet but provides for an increase in height of five feet for each permitted sign that is not utilized up to a maximum height of 35 feet. Since the subject property has only 124 feet of lot frontage, only one pole sign is permitted on the lot. Were the subject property to have at least 180 feet of lot frontage, two pole signs would be permitted and one could not be utilized, thus allowing a five-foot increase in sign height. Therefore, the need for the variance arises from subject property having 56 feet less lot frontage than necessary for a 30-foot high pole sign.

**ADJACENT ZONING AND LAND USE:**

NORTH	"GC"	Retail
SOUTH	"GC"	Office
EAST	"GC"	Restaurant
WEST	"GC"	Vacant

**UNIQUENESS:** It is the opinion of staff that this property is unique, inasmuch as the property is located adjacent to the apex of a freeway overpass and overhead freeway signs, which severely limit the visibility of the property from the freeway.

**ADJACENT PROPERTY:** It is the opinion of staff that the granting of the variance requested will not adversely affect the rights of adjacent property owners, inasmuch as all adjacent properties are developed with commercial uses and many of the adjacent commercial businesses have signs of a similar height or taller than permitted by the variance.

**HARDSHIP:** It is the opinion of staff that the strict application of the provisions of the sign regulations will constitute an unnecessary hardship upon the applicant, inasmuch as the lack of visibility of the property was created by the construction of the freeway overpass and the installation for freeway signs that block the view of the applicant's pole sign.

**PUBLIC INTEREST:** It is the opinion of staff that the requested variance would not adversely affect the public interest, inasmuch as the signage is tasteful in design, is of an appropriate scale, and has minimal lighting.

**SPIRIT AND INTENT:** It is the opinion of staff that the granting of the variance requested would not oppose the general spirit and intent of the Sign Code inasmuch as a stated intent of the Sign Code is to provide an opportunity to achieve a reasonable balance between the need for a sign and preserving the visual qualities of the community. In this instance, the need for a five foot increase in sign height to provide visibility from the freeway will provide a reasonable balance with the visual qualities of the community, especially since the sign on the subject property will be smaller and shorter than signs for adjacent businesses.

**RECOMMENDATION:** It is staff's opinion that the signage requested is appropriate for the intended purpose of relaying the location of the motel from the freeway. Should the Board determine that the five conditions necessary for the granting of the variances exist, then it is the recommendation of the Secretary that the variances be GRANTED, subject to the following conditions:

1. The pole sign on the subject property shall comply with all regulations of the Sign Code, except that the sign shall be permitted to be a maximum of 30 feet in height.
2. The pole sign on the subject property shall be limited to 70 square feet in area and shall be of a design that is in substantial conformance with the approved elevation rendering.
3. The applicant shall obtain all permits necessary to construct the signage, and the signage shall be erected within one year of the granting of the variance, unless such time period is extended by the Board.
4. The resolution authorizing the variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

**RUANE:** Any questions for Scott?

**FOSTER:** Scott what's the property to the east?

**KNEBEL:** There's a restaurant.

**FOSTER:** Denny's?

**KNEBEL:** I don't remember the exact name; I think it's a Chinese Restaurant.

**FOSTER:** Do we have any other precedent set in that area on signage?

**KNEBEL:** No, there's not been any other variances granted for signs in the area.

**DICKGRAFE:** Wichita Inn on the north side of the street in the Walmart parking lot received a variance for a height increase from 25' to 28'; although, the applicant wanted a 32 foot sign. That's been 3 or 4 years ago, immediately after the overpass was built.

**FOSTER:** Sharon did you say across the street or where?

**DICKGRAFE:** Directly north where Walmart and Sam's are. There is a Wichita Inn that is kind of in the Sam's parking lot between Sam's and Walmart and they did request a variance although the Board did not go as high as what they had requested, is my recollection, but we did grant one in this area.

**RUANE:** Scott all the photographs were taken after the sign was changed from Ramada to Super 8?

**KNEBEL:** Yes, it was basically right around the same time that the application for the variance was submitted that the brand of the hotel changed. The applicant is basically trying anything he can to turn it profitable.

**RUANE:** Any other questions of Scott?

**HOTEL ENTERPRISE GROUP, INC. RAJU SHETH:** I am also a share holder in that corporation. We have been in the business for 4 years now and every year due to this lack of sign we have seen our business dropping by 20%. We spent an extensive amount of money on renovation. We got into a better franchise. It used to be an EconoLodge when the overpass was getting built. In spite of the customer complaints and of going to the eastside Ramada and then calling from there and that now we are here so we are going to cancel our reservation because they cannot spot our place. To help us out we put six logo signs right on the highway but still people cannot see us, and they are just bypassing all the time. Right now were in a situation that we are losing about \$80,000 - \$90,000 a year. We had to get a loan from the bank just to make payments.

**RUANE:** Thank you sir, any questions?

**FOSTER:** I'd like to compliment the applicant on the material they presented. We don't always get that detail data and certainly you documented your point there. I've stayed in a lot of Super 8's and they are usually full all the time. There must be a problem.

**SHETH:** During December and January our occupancy was 28% on a 50-room hotel. Which usually fills up to like 40 rooms no matter what time of the year is because we don't have a 100 rooms to rent. Nobody shows up because they can't see it. Our prices are not high and our rooms are up to par.

**RUANE:** Thank you.

**ROGERS:** I have a comment for Sharon or J.R. Several years ago didn't we have a variance on the height of a sign just west of Dugan that was an auto parts store at the time?

**COX:** I don't remember an auto part sign. I thought there was another hotel further to the west. Maybe west of Ridge or near Ridge that tried to get a variance but it was, as I recall it, was very high of a sign and the Board denied it because the applicant didn't want to compromise.

**ROGERS:** I do recall a case similar. I think this request is a very reasonable request. I support the staff, and I am prepared to make a motion.

**FOSTER:** Mr. Chairman I recall the Red Coach, the one near the airport out there, we turned that down because they could only see it for only three to five seconds even it was raised up. This one you are going to be seeing it the whole time.

**ROGERS MOVES FOSTER SECONDS THAT THE BOARD ACCEPT THE FINDINGS OF FACT AS SET FORTH IN THE SECRETARY'S REPORT; AND THAT ALL FIVE CONDITIONS SET OUT IN SECTION 2.12.590(b) OF THE CITY CODE AS NECESSARY FOR THE GRANTING OF A VARIANCE HAVE BEEN FOUND TO**

**EXIST AND THAT THE VARIANCE BE GRANTED SUBJECT TO THE CONDITIONS SET OUT IN THE SECRETARY'S REPORT FOR BZA2002-72.**

**MOTION carries 4-0, and the Board adopts the following resolution:**

**BZA RESOLUTION NO. 2002-00072**

**WHEREAS**, Hotel Enterprise Group, Inc. c/o Raju Sheth (owner/applicant) pursuant to Section 2.12.590.B, Code of the City of Wichita, requests a variance to Section 24.04.221(3) of the Sign Code to increase the maximum permitted height for a pole sign for a motel from 25 feet to 30 feet on property zoned "LC" Limited Commercial and legally described as follows:

Lot 1, excluding the south 17 feet, Variant Addition, Wichita, Sedgwick County, Kansas. Generally located south of Kellogg and east of Dugan (6245 W. Kellogg).

**WHEREAS**, proper notice as required by ordinance and by the rules of the Board of Zoning Appeals has been given; and

**WHEREAS**, the Board of Zoning Appeals did, at the meeting of January 28, 2003, consider said application; and

**WHEREAS**, the Board of Zoning Appeals has proper jurisdiction to consider said request for a variance under the provisions of Section 2.12.590.B, Code of the City of Wichita; and

**WHEREAS**, the Board of Zoning Appeals has found that the variance arises from such condition which is unique. It is the opinion of the Board that this property is unique, inasmuch as the property is located adjacent to the apex of a freeway overpass and overhead freeway signs, which severely limit the visibility of the property from the freeway.

**WHEREAS**, the Board of Zoning Appeals has found that the granting of the variance will not adversely affect the rights of adjacent property owners or residents. It is the opinion of the Board that the granting of the variance requested will not adversely affect the rights of adjacent property owners, inasmuch as all adjacent properties are developed with commercial uses and many of the adjacent commercial businesses have signs of a similar height or taller than permitted by the variance.

**WHEREAS**, the Board of Zoning Appeals has found that the strict application of the provisions of the zoning ordinance of which variance is requested will constitute unnecessary hardship upon the property owners represented in the application. It is the opinion of the Board that the strict application of the provisions of the zoning regulation will constitute an unnecessary hardship upon the applicant, inasmuch as the lack of visibility of the property was created by the construction of the freeway overpass and the installation for freeway signs that block the view of the applicant's pole sign

**WHEREAS**, the Board of Zoning Appeals has found that the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare. It is the opinion of the Board that the requested variance would not adversely affect the public interest, inasmuch as the signage is tasteful in design, is of an appropriate scale, and has minimal lighting.

**WHEREAS**, the Board of Zoning Appeals has found that the granting of the variance desired will not be opposed to the general spirit and intent of the zoning ordinance. It is the opinion of the Board that the granting of the variance requested would not oppose the general spirit and intent of the Sign Code

inasmuch as a stated intent of the Sign Code is to provide an opportunity to achieve a reasonable balance between the need for a sign and preserving the visual qualities of the community. In this instance, the need for a five foot increase in sign height to provide visibility from the freeway will provide a reasonable balance with the visual qualities of the community, especially since the sign on the subject property will be smaller and shorter than signs for adjacent businesses.

**WHEREAS**, each of the five conditions required by Section 2.12.590.B, Code of the City of Wichita, to be present before a variance can be granted has been found to exist.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Zoning Appeals, pursuant to Section 2.12.590.B, Code of the City of Wichita, that a variance to Section 24.04.221(3) of the Sign Code to increase the maximum permitted height for a pole sign for a motel from 25 feet to 30 feet on property zoned "LC" Limited Commercial and legally described as follows:

Lot 1, excluding the south 17 feet, Variant Addition, Wichita, Sedgwick County, Kansas.  
Generally located south of Kellogg and east of Dugan (6245 W. Kellogg).

**The variance is hereby GRANTED, subject to the following conditions:**

1. The pole sign on the subject property shall comply with all regulations of the Sign Code, except that the sign shall be permitted to be a maximum of 30 feet in height.
2. The pole sign on the subject property shall be limited to 70 square feet in area and shall be of a design that is in substantial conformance with the approved elevation rendering.
3. The applicant shall obtain all permits necessary to construct the signage, and the signage shall be erected within one year of the granting of the variance, unless such time period is extended by the Board.
4. The resolution authorizing the variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

**ADOPTED AT WICHITA, KANSAS, this 28th DAY of JANUARY, 2003.**

**RUANE:** Item #3 report from OCI.

**COX:** Nothing to report at this time.

**Meeting adjourns at 1:50 pm.**